



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/749,871

Filing Date: December 30, 2003

Appellant(s): ZANDER ET AL.

Andrew D. Stover
For Appellant

EXAMINER'S ANSWER

This is in response to the reply brief filed August 30, 2007

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The amendment after final rejection filed on October 10, 2006 has not been entered. This is a correction of the statement under this heading in the examiner's answer mailed July 2, 2007.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,802,833	KUDO ET AL	10-2004
6520330	BATRA	2-2003
6,601,705	MOLINA ET AL	8-2003
6,318,555	KUSKE ET AL	11-2001
6,264,776	DIPALMA	7-2001
5,752,945	MOSLEY ET AL	5-1998
5531325	DEFLANDER ET AL	7-1996
2002/0148749	BRISEBOIS ET AL	10-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Briseboi et al.

In regard to Claim 22, Briseboi discloses a visually coordinated product comprising a product 206 having a body side liner, outer cover, and absorbent core and disposed within a first packaging component 310; the first packaging component 310 disposed in a second packaging component 102 and comprising a wrapper element having a first characteristic (e.g. 106) and a fastening element 722 releasably securing the wrapper element in a closed configuration and

Art Unit: 3761

having said second visual characteristic (e.g. 108); the second packaging component 102 having the first and second visual characteristics 106,108 (Fig. 2, [0038], [0016]-[0018], [0045]-[0053]).

Briseboi teaches that either the wrapper element of pouch 310 (Fig. 3) or said fastening element 722 (Fig. 7) provides both said first and second characteristics and therefore does not teach that the first packaging component has a wrapper element with a first visual characteristic (e.g. 106 or 108) and that the fastening element has said second visual characteristic. However, since Briseboi teaches that the first and second characteristics build upon one another to provide a complete set of information about the product ('749, ¶0014), provide information in their own rights as stand alone characteristics, and are not redundant, it would be obvious to one of ordinary skill in the art to modify the article of Briseboi such that the wrapper element of pouch 310 contains a first characteristic (such as the wave icon taught by Briseboi) and the fastening element contains a second visual characteristic (such as the word "heavy or light" as taught by Briseboi) with a reasonable expectation of success.

(10) Response to Argument

Applicant's arguments filed August 30, 2007 have been fully considered but they are not persuasive. With respect to arguments regarding the rejection of claim 22 under a new ground of rejection: Applicant argues that the scale of reference 106 of Briseboi would never be used separately from the pointer 108 because the scale of reference 106 is meaningless to the user without the pointer. This is not persuasive, first because the Office has never stated that scale 106 and pointer 108 would be without each other once the article of Brisebois is modified to meet all of the claim limitations in the manner suggested by Figs. 3-6 of Brisebois. As can be seen from Fig. 6, one of ordinary skill in the art could separate the scale 106 and pointer 108 by

Art Unit: 3761

separating along the line between the two such that the two portions are still intact and in the same position. The upper portion having the scale 106 would still be a fastening element closing the wrapper element 310, while the lower portion having the pointer 108 thereon would be disposed on the wrapper such that the wrapper element 310 would have the claimed first visual characteristic and the fastening element 722 would simply consist of the portion having scale 106, the second visual characteristic. The two characteristics 106,108 would still be directly adjacent one another, but not contiguous, such that each of visual characteristics 106,108 retain their meaning and context because the complimentary other element 106 or 108 is adjacent and can be relied upon for information by the user. Thus the scale 106 would not be meaningless as it would not be present without the pointer 108. Brisebois fairly suggests this physical separation of visual characteristics 106,108 along the dark line seen in Fig. 6 because in Figs. 3-5 Briesbois teaches visual characteristics on one part of the wrapper and then in Fig. 6 teaches a substantially identical set of mating indicators or visual characteristics on the fastening element. It is the examiner's position that because Brisebois teaches that both configurations (that of Figs. 3-5 and that of Fig. 6) are suitable and because the mating indicators 106,108 in Fig. 6 reside on a fastening element 722 that also spans portions of the wrapper 310 as well as fastening portions together, that Brisebois is fairly suggesting that the two configurations are combinable to disclose one mating visual characteristic on the wrapper 310 and one mating visual characteristic on the fastening element 722.

Applicant's arguments regarding the rejections of claims 1, 3-18, 21, 23 and 24 under 35 U.S.C. 103 have been fully considered but are not persuasive for reasons already stated in the examiner's answer mailed July 2, 2007. In response to the reply brief filed in response to said examiner's answer which contained a new ground of rejection, it is at the examiner's discretion to issue a supplemental examiner's answer to address any new issues raised in the

Art Unit: 3761

reply brief. Applicant's arguments in the reply brief that are directed to the new ground of rejection of claim 22 constitute new issues raised. Hence, examiner has issued this supplemental examiner answer to address these new issues. Applicant's other arguments are considered responses to clarifications or other statements made in the "Response to Arguments" section of said examiner's answer and are not considered herein to constitute new issues. Thus, these other arguments will not be addressed herein.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Melanie J Hand/

Examiner, Art Unit 3761

Conferees:

Melanie Hand

Kevin Sirmons
/Kevin C. Sirmons/
Supervisory Patent Examiner, Art Unit 3767

Angela Sykes
/Angela D Sykes/
Supervisory Patent Examiner, Art Unit 3762

/DONALD HAJEC/
Director, Technology Center 3700